

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Office of Financial and Insurance Regulation

Enforcement Case No. 11-11380

Agency No. 12-021-L

Petitioner,

v

GERALD SITKO

System ID No. 0031359

Respondent.

_____/

Issued and entered
this 2nd day of August 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

Respondent Gerald Sitko is a licensed insurance producer. In July 2011 the Office of Financial and Insurance Regulation (OFIR) received information that Respondent failed to remit premium funds to insurance providers. OFIR confirmed the information and issued a Notice of Opportunity to Show Compliance to Respondent alleging that Respondent had demonstrated conduct warranting compliance action pursuant to Sections 1207(1) and 1239(1)(d) and (h) of the Michigan Insurance Code, MCL 500.1207(1), 500.1239(1)(d) and 500.1239(1)(h). Respondent failed to demonstrate compliance.

On May 4, 2012, OFIR issued an Administrative Complaint and Order for Hearing (Administrative Complaint) to Respondent. The Order for Hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file a response to the allegations with a statement that Respondent planned to attend the hearing, or request an adjournment. Respondent failed to take any action.

On June 4, 2012, OFIR Staff filed a Motion for Final Decision based upon the seriousness of the allegations and Respondent's failure to demonstrate compliance and respond. Respondent did not file a reply to the motion. Given Respondent's failure to answer, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true.

Based upon the Administrative Complaint, the Commissioner makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a licensed resident insurance producer with qualifications to transact business in the lines of Life, Accident, Health, Multiple Lines P & C, Property, Casualty, and Variable Annuities.
2. On or about July 13, 2011, OFIR received information that Respondent committed wrongful acts while employed with Farmers Insurance Group (Farmers).
3. More specifically, Farmers alleged that after conducting an audit of Respondent's accounts, the final audit revealed shortages in the amount of \$7,963.94. Respondent was authorized to collect premiums from the policyholders and to deposit the premiums in the company's designated bank account. Respondent admitted that he failed to remit certain premiums collected from insureds.
4. As a licensed resident producer, Respondent knew or had reason to know that MCL 500.1207(1) provides in pertinent part:

An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.

5. As a licensed resident producer, Respondent knew or had reason to know that MCL 500.1239(1)(d) and (h) provide that the Commissioner may suspend or revoke an insurance producer license for:

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business, or

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

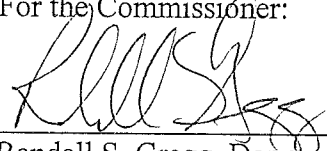
6. By failing to remit premium funds, Respondent has provided justification for the revocation of his insurance producer license.
7. By committing actions that constitute dishonest practices and demonstrate untrustworthiness and financial irresponsibility in the conduct of business, Respondent has provided justification for the revocation of his insurance producer license.

III. ORDER

Based upon Respondent's conduct and the applicable law cited above, it is ordered that:

1. Respondent shall cease and desist from violating the Michigan Insurance Code giving rise to disciplinary action pursuant to Sections 1207(1) and 1239(1).
2. Respondent shall immediately cease and desist from engaging in the business of insurance.
3. Respondent's insurance license producer is hereby **REVOKED**.

R. Kevin Clinton, Commissioner
For the Commissioner:



Randall S. Gregg, Deputy Commissioner